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Attorneys for Defendant
 NAVAGILITY, LLC

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

TOM AZZARELLO,

Plaintiff,

v.

NAVAGILITY LLC,

Defendant.

Case No. 08-CV-2371 MEJ

**DECLARATION OF ANTHONY M.
 DIMARCO IN SUPPORT OF
 NAVAGILITY, LLC'S MOTION TO
 DISMISS FOR LACK OF PERSONAL
 JURISDICTION AND IMPROPER
 VENUE PURSUANT TO F.R.C.P. 12(B)(2)
 AND 12 (B)(3)**

Anthony M. DiMarco, on oath, deposes and states as follows:

1. This declaration is made in support of NavAgility, LLC's ("NavAgility") Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue Pursuant to Fed. R. Civ. P. 12(b)(2) and (3). This declaration is based upon facts known personally by me or upon such business records of NavAgility as are admissible in evidence. As to those averments made on information and belief, I believe them to be true.

2. I am founder, President and Managing Member of NavAgility. NavAgility is a limited liability company duly organized pursuant to the laws of New York and maintains a

1 principal place of business in Poughkeepsie, Dutchess County, New York. No offices, facilities
2 or employees exist outside of New York.

3 3. NavAgility is not registered to do business in California. NavAgility has neither
4 employees nor business facilities in California. NavAgility does not maintain bank accounts in
5 California. NavAgility does not have—and has never had—an office in California. And
6 NavAgility has not made any corporate filings with the Secretary of State of California and does
7 not file any tax returns there.

8 4. NavAgility is a privately held company. At the time of the transaction at issue in
9 the Complaint, as well as now, NavAgility has been owned by thirty-four (34) investors. The
10 owners of 97.86 % of NavAgility, including myself, live in New York. This group is comprised
11 of thirty-two (32) investors. One investor, owning 0.73% of the equity, lives in New Jersey. The
12 sole other investor—owning 1.41% of the equity—is Thomas Azzarello (“Azzarello”), who
13 purports to live in Contra Costa, California.

14 5. For all of 2007 and, to date, of 2008, NavAgility has had revenue of
15 approximately \$175,000.00. On information and belief, none of that revenue was from
16 California. In fact, ninety-seven (97%) per cent of NavAgility’s revenue for that period was
17 derived from customers and clients in New York. And NavAgility does not have—and has never
18 had—any clients in California.

19 6. On or about April 4, 2007, NavAgility sought to obtain bridge loan financing
20 from its already existing investors. The concept for this bridge loan was conceived and
21 implemented by NavAgility’s executives in New York. Of the total of seven (7) investors who
22 chose to participate in the bridge loan opportunity, six (6) reside in New York. Azzarello, who is
23 the only one who does not, purports to reside in California.

24 7. NavAgility did not target or advertise for investors in California nor did it ever
25 retain an employer or banker to seek out any financing from California’s residents. Rather,
26 Azzarello learned from his brother, a former NavAgility executive, that NavAgility was seeking
27 bridge loan financing. Thus, Azzarello’s averment in paragraph 3 of the Complaint that
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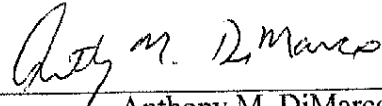
1 NavAgility “reached out to [Azzarello], knowing that he resided in California” is misleading.
2 Azzarello learned of NavAgility’s need for a bridge loan from his brother and then actively
3 sought to be one of the participants. I note that the NavAgility Bridge Loan Letter of Acceptance
4 dated April 4, 2007 is a form letter to all those prior investors of the company who had expressed
5 interest in participating in the opportunity to assist NavAgility pursuant to terms that were most
6 generous to such in investors. The Letter dated April 4, 2007—attached to and incorporated into
7 Azzarello’s Complaint—is addressed with the generic salutation “Dear Investor.” This letter
8 was not a personalized approach to any specific investor nor was it a solicitation from the general
9 public.

10 8. The Complaint is also misleading to the extent it implies Azzarello made a simple
11 loan to NavAgility, purportedly memorialized solely by the one page “Dear Investor” letter
12 appended to the Complaint. In fact there are other documents, as well as witness testimony,
13 demonstrating that the investors and NavAgility agreed and understood that NavAgility had the
14 option of paying its bridge loan investors back with equity if doing so were deemed in
15 NavAgility’s best interests. Thus, adjudication of this matter are not only critical to NavAgility
16 but it will directly affect the rights and claims of all of the seven (7) investors, six (6) of whom
17 reside and work in New York. Not only is New York law applicable but decisions concerning
18 NavAgility’s investors and the treatment of its debt and equity components will have great
19 impact on the shareholders and employees of NavAgility, none of whom are believed to have ties
20 to California.

21 9. As it maintains no records and has no employees in California, it would constitute
22 a hardship for NavAgility to litigate this matter there. This is particularly true in that, other than
23 Azzarello, all witnesses necessary to the prosecution or defense of this claim are located in New
24 York. I believe such witnesses to include, without limitation the following potential witnesses:
25 Richard Azzarello, Lawrence Holfelder, David Hawthorne, Stanley Schutzman, and John
26 Jermyn. On information and belief, all of the potential witnesses reside in New York.
27 Additionally, to the extent that there may be any debt between Azzarello and NavAgility, it does
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1 not make sense to litigate such matter in California. I also believe that all pertinent records and
2 documents are located in New York.

3 Signed this 30th day of May, 2008, under the pains and penalties of perjury:

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